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FILED
NOV 4 1959
JAMES R. BROWNING, Clerk

IN THE

# Supreme Court of the United States

October Term 1959.
No. 124.

JUANITA DALE PHILLIPS,

*Petitioner,*

*vs.*

THE STATE OF TEXAS,

**On Petition for Writ of Certiorari to the Court of Criminal Appeals of Texas.**

## PETITION FOR REHEARING.

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## PETITION FOR REHEARING.

Pursuant to Rule 58(2) of this Court petitioner respectfully prays for a rehearing of the order denying the petition for writ of certiorari herein.[1]

The ground for rehearing is that although in her petition (p. 14, f.n. 7) petitioner suggested that this might be an appropriate case and time for the *Wolf v. Colorado* doctrine (338 U. S. 25) to be reconsidered,[2] she did not directly urge upon the Court that her petition be granted

[1]The petition for writ of certiorari was denied on October 12, 1959.

[2]Reference was also made in the Supplemental Memorandum in Support of the Petition (p. 3) to the statement regarding the applicability of the Fourth Amendment to the States appearing in footnote 5, page 13 of the jurisdictional statement in *Eaton v. Price*, No. 30, Oct. Term, 1959 (No. 699, Oct. Term, 1958).

for the express purpose of overruling that case. She does so now.

Cases subsequent to *Wolf v. Colorado,* particularly *Frank v. Maryland,* 359 U. S. 360, have so obscured the line separating the Fourth Amendment from the Fourteenth Amendment that it would appear appropriate for the Court to now lay down the rule in the more explicit terms of the Fourth rather than in the more general terms of the Fourteenth.

In *Frank v. Maryland,* five of the justices of this Court felt that the Fourth Amendment applied directly to the States through the Fourteenth Amendment. Thus, the dissenting justices said (359 U. S. at 374): "The Due Process Clause of the Fourteenth Amendment enjoins upon the States the guarantee of privacy embodied in the Fourth Amendment . . ." The concurring justice said (359 U. S. at 373): "The core of the Fourth Amendment prohibiting unreasonable searches applies to the States through the Due Process Clause of the Fourteenth Amendment," and *(ibid.)* "I understand the Court's opinion to adhere fully to that principle." Even the Court's opinion blurred the Fourth Amendment and the Due Process clause of the Fourteenth. For, after reiterating the language of *Wolf v. Colorado,*[3] the Court relied for explanation upon the historical facts leading up to the adoption of the Fourth Amendment and then concluded by saying (359 U. S. at 365-366):

> ". . . . While these concerns for individual rights were the historic impulses behind the Fourth Amend-

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[3](359 U. S. at 362-363): "'(T)he security of one's privacy against arbitrary intrusion of the police' is fundamental to a free society and as such protected by the Fourteenth Amendment."

ment and its analogies in the state constitutions, the application of the Fourth Amendment *and* the extent to which the essential right of privacy is protected by the Due Process Clause of the Fourteenth Amendment are of course not restricted within these historic bounds." (Italics added.)

It appears, therefore, that no real purpose is being served by maintaining on paper that there is a distinction between the Fourth Amendment and the Due Process Clause of the Fourteenth.[4] At best, the distinction is theoretical; in reality it is non-existent. The Court should, therefore, overrule *Wolf v. Colorado* and hold squarely that the Fourth Amendment guaranty applies directly to the States through the Due Process clause of the Fourteenth (*Cf. Gitlow v. New York*, 268 U. S. 652, 666).

**Conclusion.**

Rehearing and the petition for writ of certiorari should be granted.

Respectfully submitted,

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[4]Speaking, of course, of the application of the Due Process Clause to the protection of the right of privacy.

## Certificate of Counsel.

I certify that the within Petition for Rehearing is presented in good faith and not for delay and that the petition is restricted to a substantial ground available to petitioner although not previously presented.

FRED OKRAND.